

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THE SCOTTS COMPANY LLC,)	
and)	
OMS INVESTMENTS, INC.,)	Civil Action No. 2:13-cv-793
Plaintiffs,)	
)	Judge Gregory L. Frost
v.)	
DL WHOLESALE INCORPORATED,)	Magistrate Judge Terrence P. Kemp
Defendant.)	

CONSENT ORDER

Plaintiffs The Scotts Company LLC and OMS Investments, Inc. (collectively, “Scotts”) brought the above-styled case (the “Lawsuit”) against Defendant DL Wholesale Incorporated (“DL Wholesale”), asserting that DL Wholesale’s use and/or attempted registration of the GRO1 and GRO1 BY DL WHOLESALE marks (collectively, the “GRO1 Marks”) constituted: (i) federal trademark infringement in violation of Section 32 of the Lanham Act; (ii) federal unfair competition in violation of Section 43(a) of the Lanham Act; (iii) federal dilution in violation of Section 43(c) of the Lanham Act; (iv) trademark infringement and unfair competition in violation of Ohio Rev. Code Ann. §§ 4165.02 and 4165.03; and (v) dilution in violation of Ohio common law.

DL Wholesale denied Scotts’ assertions and asserted counterclaims against Scotts for: (i) a declaration that the term and mark component “GRO” is generic, merely descriptive, or lacks secondary meaning; and (ii) a declaration that DL Wholesale’s

GRO1 and GRO1 BY DL WHOLESALE marks do not infringe Scotts' MIRACLE-GRO Mark or GRO Marks; which assertions Scotts denied.

Scotts and DL Wholesale have now advised the Court that they have fully and finally settled all claims and counterclaims in the Lawsuit by entering into a confidential settlement agreement, pursuant to which, among other things, DL Wholesale will phase out its use of the GRO1 Marks, will withdraw its applications to register the GRO1 Marks, and will transition to GROW1 and GROW1 BY DL WHOLESALE marks, which Scotts does not oppose.

Accordingly, it is hereby ORDERED that the Lawsuit, including all claims and counterclaims therein, is DISMISSED with prejudice.

Scotts and DL Wholesale will each bear their own costs and attorney's fees in the Lawsuit.

SO ORDERED.

/s/ Gregory L. Frost
United States District Judge

Date: October 9, 2014

Approved as to form, October 8, 2014,

ICE MILLER LLP

PORTER WRIGHT

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